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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/762,859	01/22/2004	Wallace J. Beaudry	8115.12394A-PCT US DIV I	5932
26308	7590	06/29/2006	EXAMINER LEWIS, KIM M	
RYAN KROMHOLZ & MANION, S.C. POST OFFICE BOX 26618 MILWAUKEE, WI 53226			ART UNIT 3743	PAPER NUMBER

DATE MAILED: 06/29/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/762,859

Applicant(s)

BEAUDRY, WALLACE J.

Examiner

Kim M. Lewis

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-11 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 6-11 is/are allowed.
- 6) ☒ Claim(s) 1-5 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 4/13/06, 9/27/04, 6/21/04, 5/10/04 + 1/22/04
- ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☒ Other: Detailed Action.

## **DETAILED ACTION**

### ***Information Disclosure Statement***

1. The information disclosure statements filed 1/22/04, 5/10/04, 6/21/04, 9/27/04 and 4/13/06 have been received and made of record. Note the acknowledged PTO-1149 forms enclosed herewith.

### ***Priority***

2. Applicant's claim for the benefit of a prior-filed application under 35 U.S.C. 119(e) or under 35 U.S.C. 120, 121, or 365(c) is acknowledged. Applicant is advised to update the continuing data.

### ***Claim Rejections - 35 USC § 102***

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1-3 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,234,462 ("Pavletic").

As regards claim 1, Pavletic discloses a method and kit for accelerating the closing of open skin wounds, which inherently includes moving a first predetermined

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epidermal area relative to a laterally spaced, second predetermined epidermal area (note the abstract). The method comprises the steps of anchoring an adhesive coated anchoring structure to said first predetermined epidermal area (constituted by placing a first anchor, e.g. 18 or 58), coupling a marginal area of said anchoring structure to a marginal area of an elastic member (constituted by attaching strap 38 to anchor 18 or elastic loop 72 to anchor 58, see col. 4, lines 3-11 and col. 4, lines 56-65), coupling an oppositely disposed marginal area of said elastic member to a second adhesive coated anchoring structure (constituted by attaching strap 38 to anchor 14), and anchoring said second adhesive coated anchoring structure to said second epidermal area (constituted by attaching anchor 14 to the skin), whereby said first and said second predetermined epidermal areas are moved relative to one another, which accelerates wound closure.

Applicant should note that the steps do not have to be in sequential in order to anticipate the

As regards claim 2, Pavletic discloses the method of claim 1, wherein said anchoring structures each include a first side and a second side (note member 18 in Fig. 2 having first and second sides containing adhesive 36 and fastener 26).

As regards claim 3, Pavletic discloses the method of claim 2, wherein an adhesive material (36) is located on said first side of said anchoring structures, the first sides further including a plurality of slits (constituted by the openings in members 104 and 106) having a predetermined shape.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

7. Claims 3-5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Pavletic in view of U.S. Patent No. 5,843,025 ("Shaari").

**Alternative Rejection.**

As regards claims 3 and 4, Pavletic fails to teach that the first sides of the anchors include a plurality of slits. However, Shaari discloses a bandage having an external anchor, wherein the anchors may be fenestrated in order to conform to the skin so as to provide flexibility and/or stretchability to the anchor in sites where motion is frequent (col. 5, lines 16-20). It would have been obvious to one having ordinary skill in the art to provide the anchor of Pavletic with fenestrations/slits in order to allow the anchors to conform to the skin, as suggested by Shaari.

Pavletic also fails to teach that the predetermined shape of the slits is a U shape. However, the applicant on page 21 of the specification discloses that the u shape slits are preferred, but that the slits could be any shape. Thus, the applicant fails to teach the criticality of the u shape.

Therefore, absent a critical teaching and/or a showing of unexpected results derived from the use of a u shaped slit, the examiner contend that the shape of the slit is an obvious design choice, which does not patentably distinguish applicant's invention.

As regards claim 5, Pavletic fails to teach the method of claim 1 wherein said elastic member includes at least one side having a medicinal material thereon. Shaari, however discloses a dressing (2) that may have a medicament thereon for treatment of the site under the bandage.

In view of Shaari, it would have been obvious to one having ordinary skill to add a medicament to dressing (50) of Pavletic in order to treat the site under the dressing. Applicant should note that the dressing, since it is placed on one side of the strap/elastic loop, meets the limitation of the elastic member including at least one side having a medicinal material thereon, once modified to include the medicament.

#### ***Allowable Subject Matter***

8. Claims 6-11 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kim M. Lewis whose telephone number is (571) 272-

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4796. The examiner can normally be reached on Mon., Wed., and Fri., from 7:30 am to 3:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry A. Bennett, can be reached on (571) 272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Kim M. Lewis/  
Kim M. Lewis  
Primary Examiner  
Art Unit 3743

kml  
June 25, 2006

Henry Bennett  
Supervisory Patent Examiner  
Group 3700